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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Situation of human rights in Nigeria

Report submitted by the Special Rapporteur of the Commission on Human Rights, Mr. Soli Jehangir Sorabjee, pursuant to Commission resolution 1997/53

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Introduction

1. The present report is submitted by the Special Rapporteur to the Commission on Human Rights at its fifty-fourth session, in accordance with Commission resolution 1997/53 of 15 April 1997 and Economic and Social Council decision 1997/263.

2. The Special Rapporteur deeply regrets that he is unable to report to the Commission his findings based upon a visit to Nigeria. As noted in the present report, the Special Rapporteur had hoped to carry out a fact-finding mission to Nigeria prior to the fifty-fourth session of the Commission on Human Rights but was unable to secure approval from the Nigerian authorities.

3. It may be recalled that the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Bacre Waly N'diaye, and the Special Rapporteur on the independence of judges and lawyers, Mr. Param Cumaraswamy, were unable to visit Nigeria pursuant to resolution 1996/79 of the Commission on Human Rights because the Nigerian Government did not agree to their standard terms of reference. 1/

4. The present report, which is based upon the analysis of information received by the Special Rapporteur from various sources, is divided into five chapters. Chapter I contains the mandate and activities of the Special Rapporteur. Chapter II contains the historical background of the situation in Nigeria. Chapter III sets out Nigeria's international obligations. Chapter IV describes the situation of human rights in Nigeria with special attention to violations of specific rights. The preliminary conclusions and recommendations are set out in chapter V.

I. MANDATE AND ACTIVITIES OF THE SPECIAL RAPPORTEUR

A. Terms of reference

5. The Special Rapporteur on the situation of human rights in Nigeria was appointed in accordance with Commission resolution 1997/53, which was endorsed by the Economic and Social Council in decision 1997/263.

6. In its resolution 1997/53, the Commission decided to invite the Chairman of the Commission to appoint a Special Rapporteur on the situation of human rights in Nigeria, with a mandate to establish direct contacts with the authorities and the people of Nigeria, and requested that the Special Rapporteur report to the General Assembly at its fifty-second session and to the Commission at its fifty-fourth session on the basis of any information which might be gathered, and to keep a gender perspective in mind when seeking and analysing information. Pursuant to that resolution, the Chairman of the Commission appointed Mr. Tiyanjana Maluwa (Malawi) as Special Rapporteur of the Commission on Human Rights on the situation of human rights in Nigeria. Following Mr. Maluwa's resignation on 12 August 1997 on personal grounds, the Chairman appointed Mr. Soli Jehangir Sorabjee (India) as Special Rapporteur on 16 October 1997 for the purpose of implementing the aforesaid resolution of the Commission on Human Rights.

7. Due to the late nomination, it was not possible for the Special Rapporteur to submit an interim report on the situation of human rights in Nigeria to the General Assembly at its fifty-second session.

8. Upon assumption of his mandate, the Special Rapporteur identified the priority concerns of the international community with regard to the situation of human rights in Nigeria. These concerns are reflected in the resolutions which the Commission on Human Rights and the General Assembly have adopted in the past 2/ and are more particularly referred to in Commission resolution 1997/53. In this resolution the Commission expressed its deep concern:

(a) At continuing violations of human rights and fundamental freedoms in Nigeria, including arbitrary detention, as well as failure to respect due process of law;

(b) That additional persons among those detained in Nigeria are to be tried by the same flawed judicial process which led to the arbitrary execution of Ken Saro-Wiwa and his associates;

(c) That the Government of Nigeria, despite earlier commitments, refuses to cooperate with the Commission, which prevented the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the independence of judges and lawyers from visiting Nigeria;

(d) That the absence of representative government in Nigeria has led to violations of human rights and fundamental freedoms and is contrary to the popular support for democratic government as evidenced in the 1993 elections.

9. Furthermore, the Commission called upon the Government of Nigeria to abide by its freely undertaken obligations under the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and other human rights instruments, including the African Charter on Human and Peoples' Rights, to cooperate fully with the Commission and its mechanisms and to take concrete steps to restore democratic government without delay.

10. Finally, the Commission requested the Secretary-General, in the discharge of his good offices mandate and in cooperation with the Commonwealth, to continue further discussions with the Government of Nigeria and to report on progress in the implementation of the present resolution and possibilities for the international community to lend practical assistance to Nigeria in achieving the restoration of democratic rule and the full enjoyment of human rights and fundamental freedoms.

B. Communications with the Government regarding the requested mission

11. Within the framework of the mandate entrusted to him by the Commission, the Special Rapporteur immediately initiated informal consultations with the Permanent Representative of Nigeria to the United Nations Office at Geneva, with the objective of assessing the possibilities of undertaking an *in situ* fact-finding mission.

12. In this connection, the Special Rapporteur sent letters on 29 October 1997 and 1 December 1997 to the Minister of Foreign Affairs through the Permanent Mission in Geneva requesting approval for a fact-finding mission to the country. The 1 December letter stated that due to time constraints, the Special Rapporteur would highly appreciate receiving an official reply from the Government regarding the aforementioned request by 8 December 1997. In a note verbale of 5 December, the Government stated that due to upcoming elections, it would be unable to provide a response by that date.

13. On 7 January 1998, the Special Rapporteur transmitted a third letter to the Government of Nigeria requesting the communication of a decision by 12 January 1998, in light of the 31 January deadline for the submission of the report to the Commission on Human Rights. He reiterated his desire to discharge his mandate impartially and objectively by ascertaining the point of view of the Nigerian Government and to consult other sources of information before finalization and submission of his report to the Commission on Human Rights.

14. Having received no response to this communication, the Special Rapporteur sent a fourth letter to the Government on 19 January 1998, listing in detail his main concerns about the human rights situation in Nigeria. The letter concluded with the following paragraphs:

> "I hardly need emphasize the relevance of the information I have requested of you and the importance of your views in order to discharge my mandate as Special Rapporteur in an impartial and objective manner. I would also be most appreciative of any other information or comments relative to the enjoyment of human rights in your country which you would desire to transmit to me and which would assist me in preparation of my report to the Commission on Human Rights.
>
> "Given the deadline for the preparation of this report and in view of the fact that I have till date not received any official permission from your Government for a mission to Nigeria, I would greatly welcome your Government's response to the above-mentioned concerns at your earliest convenience, and preferably by 26 January 1998. I would also appreciate meeting with Your Excellency in Geneva on 26 or 27 January at a time of your convenience."

15. Subsequent to a meeting with the Permanent Representative in Geneva on 26 January 1998, the Special Rapporteur transmitted to him a written communication containing the following paragraphs:

> "In response to my inquiry about a visit to Nigeria as the country-specific Special Rapporteur, you informed me that my requests as communicated in my letters dated 29 October 1997, 1 December 1997 and 7 January 1998 were still under consideration and that you were not in a position to make any commitment regarding the mission's visit to Nigeria.
>
> "This was disappointing news. Regretfully, I am constrained to conclude that in view of the deadline of 31 January 1998 for the submission of my

report to the Commission on Human Rights, the absence of a positive response from your Government to date to my long-pending requests, is tantamount to a de facto refusal of permission to visit Nigeria in fulfilment of my mandate according to Commission on Human Rights resolution 1997/53 of 16 April 1997.

"I am therefore proceeding accordingly with the preparation and submission of my report.

"I am looking forward to early receipt of the information and clarifications which I have requested in my communication dated 19 January 1998."

16. At the time of finalization of this report, no further communication had been received from the Nigerian Government.

C. Sources of information

17. In the absence of approval for a fact-finding mission to Nigeria and in seeking to fulfil his mandate, the Special Rapporteur travelled on mission to London and Geneva where he held consultations with individuals, representatives of non-governmental organizations, and representatives of intergovernmental organizations and specialized agencies.

18. In preparing his report, the Special Rapporteur consulted many sources of information, including the Government of Nigeria, individuals, non-governmental organizations (NGOs), intergovernmental organizations, individual communications, documents and reports provided by governmental and non-governmental organizations, the Nigerian and international media, the decisions of the Working Group on Arbitrary Detention, the reports of the Special Rapporteurs on extrajudicial, summary or arbitrary executions and on the independence of judges and lawyers (A/51/538 and Add.1; E/CN.4/1997/62 and Add.1), and communications to the Nigerian Government addressed by the Special Rapporteur on torture, the Special Rapporteur on extrajudicial, summary and arbitrary executions, and the Special Rapporteur on freedom of expression.

II. HISTORICAL BACKGROUND

19. Since Nigeria's independence in October 1960, several military coups have taken place. With the objective of return to civilian rule, elections were held on 12 June 1993. However, the results of these elections were subsequently annulled. New elections were scheduled for February 1994 under a caretaker government, but on 18 November 1993 the Provisional Ruling Council (PRC) led by General Sani Abacha ousted the caretaker government, dissolved all existing structures at the local, State and parliamentary levels, and instituted a one-year constitutional review. On 1 October 1995, the PRC announced its own three-year programme for the restoration of democracy and return to civilian rule. The Nigerian Government has established three of the five institutions scheduled to be created according to its transition timetable, viz. the Transitional Implementation Committee, the National Electoral Commission of Nigeria (NECON) and the State Creation, Local Government and Boundary Adjustment Committee.

20. The transition programme for the return of Nigeria to an elected civilian government, detailed in Decree No. 1 of 1996, is behind schedule. Local government elections originally scheduled for late 1996 were carried out peacefully on 15 March 1997, but suffered severe problems due to a flawed registration process, pre-election screening of candidates and unresolved disputes about the delineation of constituencies. State assembly elections, originally slated for September 1997, were held in December 1997 with an extremely low voter turn-out. The Government cancelled results in some constituencies. Elections of State governors, originally scheduled for late 1997, will reportedly take place along with presidential elections in the third quarter of 1998. Only 5 political parties out of the 17 which had applied for registration were registered, and it has recently been reported that 4 parties have chosen head of State Sani Abacha as their joint presidential candidate. According to an April 1997 decree, the head of State was given authority to remove duly elected local council representatives from their positions. Based on these reports, non-governmental organizations and opposition groups have cast doubt on the genuineness of the commitments to return to civilian rule and restoration of democracy.

21. Nigeria is a member of the Commonwealth. However, its membership was suspended for two years by the Commonwealth Heads of Government Meeting in Auckland, New Zealand in November 1995, pending its compliance with the principles of the 1991 Harare Declaration, which commit Commonwealth members to democratic political processes and respect for human rights and the rule of law. At its last gathering in Edinburgh, Scotland, in October 1997, the Meeting decided to continue the suspension of Nigeria from the Commonwealth.

III. NIGERIA'S INTERNATIONAL OBLIGATIONS

22. Nigeria is a party, inter alia, to the following international instruments: the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Prevention and Punishment of the Crime of Genocide and the Slavery Convention. Nigeria has signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment but to date there has been no ratification. Nigeria is also a party to the African Charter of Human and Peoples' Rights.

IV. ANALYSIS OF ALLEGATIONS RELATING TO THE HUMAN RIGHTS SITUATION IN NIGERIA

A. Mechanisms for the protection of human rights

1. Constitutional guarantees

23. At present, no constitutional guarantee for the protection of the rights of the people of Nigeria exists due to the adoption of Decree No. 107 of 1993, namely the Constitution (Suspension and Modification) Decree, which restores the 1979 Constitution while suspending the application of its human rights provisions. Such provisions broadly guaranteed the rights as set out in the

International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights. The said decree also excludes the jurisdiction of the courts. Provisions of the African Charter were incorporated into the domestic law of Nigeria by the Act of 1983 (African Charter Ratification and Enforcement Act), which was subsequently repealed by section 13.1 of the Political Parties (Dissolution) Decree No. 114 of 1993.

24. In this connection, the Special Rapporteur notes that the Human Rights Committee recognized in its concluding observations the "fundamental inconsistencies between the obligations undertaken by Nigeria to respect and ensure rights guaranteed under the Covenant and the implementation of those rights in Nigeria" (CCPR/C/79/Add.65, para. 14).

2. The judiciary

25. The independence of the judiciary is undermined by the existence of ouster clauses, inter alia in the following decrees. The State Security (Detention of Persons) Decree No. 2 of 1984, which provides for the indefinite or incommunicado detention without charge of anyone deemed a threat to State security, excludes the courts from making any order regarding persons held under the decree. Federal Military Government (Supremacy and Enforcement of Powers) Decree No. 12 of 1994 prohibits legal challenges to any military decrees. 3/ And clause 5 of Decree No. 107 of 1993 (see above) ousts the jurisdiction of the courts. 4/ The African Commission on Human and Peoples' Rights, in its decision in Civil Liberties Organization v. Nigeria, held that Decree No. 107 constituted a breach of articles 7 and 26 of the African Charter on Human and Peoples' Rights. The Commission observed, "the ousting of jurisdiction of the courts of Nigeria over any decree enacted in the past 10 years, and those to be subsequently enacted, constitutes an attack of incalculable proportions on article 7. (...) An attack of this sort on the jurisdiction of the courts is especially invidious, because while it is a violation of human rights in itself, it permits other violations of rights to go unredressed". 5/

26. The authority of the judiciary is further impaired because court orders are either disobeyed or implemented only after considerable delay. During the period under consideration, the following instances have come to the attention of the Special Rapporteur:

(a) Eleven soldiers reportedly continue to be detained incommunicado in Kirikiri prison in connection with an April 1990 alleged coup attempt despite a 23 July 1997 order of the Federal High Court in Lagos to release seven of them;

(b) Dr. Frederick Fasehun reportedly remains in incommunicado detention despite Federal High Court orders for his release on 21 January and 10 March 1997;

(c) Chief Olabiyi Durojaiye has allegedly been held incommunicado and without charge since 3 December 1996 in Lagos despite repeated orders issued by the Federal High Court to produce him before the court;

(d) Justice Ayodele Philips of the Lagos State High Court ordered on 22 March 1996 the release of Mr. Femi Falana, a lawyer and human rights activist arrested on 14 February. The order has allegedly been disobeyed;

(e) A Federal High Court of Lagos ordered on 27 May 1996 the payment of N109,050 to Ms. Nike Rasome-Kuti, daughter of detained Fr. Beko Rasome-Kuti, as damages for assault and humiliation suffered in the hands of the Nigerian Police Force. This order has reportedly been disobeyed;

(f) Three senior members of the National Democratic Coalition, Alhaji Ganiyu Dawodu, Chief Ayo Adebanjo and Abraham Adesanya, remained in detention without charge until 14 October 1996 despite an order for their immediate release issued by the Federal High Court in Lagos on 16 July 1996 on the grounds that their arrest and detention were illegal and unconstitutional. The same order included compensation of N500,000 which allegedly has not been paid;

(g) Soji Omotunde, editor of the African Concord, reportedly remains in detention despite an order issued on 16 December 1997 by the Federal High Court in Lagos for his release.

27. According to the Honourable Justice A.F. Adeyinka, "The conduct of the Attorney-General and of the Federal Government of Nigeria in disobeying the Court Orders is reprehensible. The Government's disobedience of Court Orders is in fact destroying the basis in which lawyers can defend the rights of Nigerian citizens which the Government is now seeking to protect by this action ... . If citizens whose rights the Federal Government now seeks to protect follow the Government's bad example and refuse to obey Court Orders, it will lead not only to the disruption of the due administration of justice and the Transition to Civil Rule Programme but also to chaos, anarchy and ultimate dismemberment of the Federal Republic of Nigeria." 6/

28. The inevitable consequence of the ouster clauses in the decrees coupled with disobedience of court orders is that the independence of the judiciary is eroded and the rule of law is subverted. According to agreement of evidence, it seems that disobedience of court orders or their delayed implementation is resulting in the demoralization of the judiciary. This situation would facilitate the perpetration of a broad range of human rights violations as set out below.

B. Analysis of allegations pertaining to specific rights

1. Right to life

29. Guaranteed by article 6 of the ICCPR and article 4 of the African Charter on Human and Peoples' Rights, the right to life may be breached by extrajudicial, summary or arbitrary executions.

30. The use of excessive force by security forces in violation of the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the Code of Conduct for Law Enforcement Officials, has reportedly resulted in extrajudicial killings at roadblocks, during patrols, in the course of quelling disturbances and pro-democracy rallies,

when combating crime, and when dealing with detained persons. "Operation Sweep", a task force set up by the Lagos state government to combat armed robbery, has reportedly been responsible for the deaths of several civilians, including Chinyere Okoye, a passenger in a commuter bus reportedly shot dead when the driver failed to stop upon the task force's order; Godfrey Chukwu, a newspaper vendor fatally wounded by shots fired on 1 July 1997 by Operation Sweep officers; and two students of Lagos State University, Gbenga Oyenuga and Kunle Odede Ogboro, were reportedly shot when Operation Sweep was called in to quell student demonstrations following the university's dismissal of student union leaders. Solomon Awighene was reportedly shot by police in November 1997 after driving through a roadblock and refusing to pay a bribe, and four persons were reportedly killed when police opened fire on demonstrators in Kaduna state protesting the detention of religious leader Sheikh Ibrihim Al-Zakzaky. Said Adeola, a 19-year-old student at Mushin High School, Lagos, was allegedly shot and killed by police at Odo-Eran bus stop, Itire, Lagos. Barile Kogbara was reportedly shot to death on 12 July 1997 by members of the Rivers State Internal Security Task Force at a roadblock in Tai Local Government Area, Ogoni, while travelling in a bus which failed to stop and pay a bribe. On 22 August 1997, Abarnigere Aaron Bassey, a taxi driver, was reportedly beaten to death by soldiers from the Akwa Obom State Task Force on Petroleum and Transport. A 50-year-old Ogoni man identified as Daniel Naador, arrested in December 1997, reportedly died on 24 January 1998 in custody at Po detention centre after having been beaten and denied medical attention. Gbenga Dosumu, a petrol station attendant, was reportedly shot dead by customs officers demanding fuel during a shortage on 23 June 1997. The responsible individuals were seldom held accountable for their acts by the Government.

31. The Special Rapporteur has received allegations concerning the imposition of the death penalty following trials which fall short of international standards regarding fair trial. As noted by the Human Rights Committee, the number of death sentences imposed and carried out in Nigeria is very high. In this connection it may be recalled that the Special Rapporteur on extrajudicial, summary and arbitrary executions communicated his concern to the Government regarding 43 persons who were allegedly publicly executed in Lagos on 22 July 1995 following proceedings which fell short of international standards. The Government responded that the persons concerned had been found guilty of armed robbery, and that 38 had been tried and sentenced by the Lagos Armed Robbery and Firearms Tribunal (see E/CN.4/1998/68/Add.1, para. 301). Judges on these tribunals, established under the Robbery and Firearms Decree (Special Provisions) Decree No. 5 of 1984, are appointed by military authorities and do not have the requisite independence and impartiality. Furthermore, there is no right of appeal. Even where a right of appeal is provided, the confirmation or otherwise of the sentence is entrusted to the Provisional Ruling Council and not a judicial tribunal. For example, the case of the "Otokoto 7" concerned seven individuals who were reportedly sentenced to death for armed robbery by a three-member tribunal, consisting of a military officer and a police superintendent. The appeal of the seven individuals was heard by the state military administrator as opposed to a special appeals tribunal, who upheld the death sentences for six of those convicted and commuted one sentence to life imprisonment. The six were reportedly executed by firing squad on 31 July 1997. Under article 6 of the ICCPR, sentence of death may be imposed only for the most serious crimes. The

Human Rights Committee recommended, inter alia, that Nigeria "consider the abolition of the death penalty. Until its abolition, the State party must ensure that the application of the death penalty be strictly limited to the most serious crimes, as required by article 6 (2) of the Covenant, and that the number of crimes for which the death penalty is imposed be reduced to the minimum" (CCPR/C/79/Add.65, para. 31).

32. The Special Rapporteur has received information regarding the execution of persons under 18 years of age in contravention of article 6 (5) of the ICCPR and article 37 (a) of the Convention on the Rights of the Child. Chidiebere Onuoha (aged 17), along with five others, was reportedly executed in front of a crowd of thousands on 31 July 1997. These individuals, along with Patrick Obinna Okoroafor (aged 16), had reportedly been sentenced to death on 30 May 1997 by a Robbery and Firearms Tribunal in Owerri, Imo state.

33. The Special Rapporteur has also received persistent reports concerning the unfairness of trials similar to that of Ken Saro-Wiwa and others which led to their execution. It has come to his attention that the 20 suspected supporters of the Movement for the Survival of the Ogoni People (MOSOP) who have been detained in Ogoni, Rivers state, since 20 September 1995 will be tried before the same tribunal that sentenced Ken Saro-Wiwa and others, and in connection with the same facts and following the same flawed procedure which fall short of international standards and which would consequently be in violation of article 7 (a), (c) and (d) of the African Charter as decided by the African Commission on Human and Peoples' Rights. 7/

34. The fact-finding mission of the United Nations Secretary-General recommended, inter alia, that in the case of the trials of Ken Saro-Wiwa and others, the Government should establish a panel of eminent jurists to establish the modalities to determine who and to what extent financial relief could be accorded to the dependents of the families of those executed.

35. The case of Kudirat Abiola, senior wife of the presumed winner of the 1993 presidential elections, Chief Moshood K.O. Abiola, who was allegedly shot and killed in her car on 4 June 1996, was transmitted by the Special Rapporteur on extrajudicial, summary and arbitrary executions to the Government. The Special Rapporteur on the situation of human rights in Nigeria expresses his concern that the Government's response, which focused on the reason why the case was allegedly submitted, cannot serve as a justification for the lack of a prompt and impartial investigation of the case, and the bringing of the perpetrators to justice (see E/CN.4/1998/68/Add.1, para. 299).

36. The right to life is also violated by reason of deaths in custody which take place mainly as a result of cruel, inhuman and degrading treatment, as well as of neglect and harsh and life-threatening conditions of detention. The following instances have come to the attention of the Special Rapporteur: Alhaji Shehu Musa Yar'Adua reportedly died on 8 December 1997; Patrick Usikekpo reportedly died at Uyo prison on 16 December 1997 along with five other prisoners; Chief S.K. Tigidam was arrested in Zaakpon and reportedly died in June 1997; Innocent Ekeanyanwu reportedly died in custody in September 1997; and Matthew Anyanwu reportedly died in custody in August 1997.

37. Information from the Government regarding these cases was sought by the Special Rapporteur in his communication dated 19 January 1998 but to date no response has been received.

2. Right to liberty and security of person

38. Guaranteed by article 9 of the ICCPR and article 6 of the African Charter, the right to liberty and security of person is violated on a massive scale, mainly because of Decree No. 2 of 1984 which permits detention without trial for an indefinite period of time. Moreover, Decree No. 2 of 1984 ousts the jurisdiction of the court in respect of challenge to arbitrary detention. A review panel has been established to review periodically detentions beyond the initial period of 90 days. The review panel appears to be an ad hoc body, whose members are appointed by the executive, and may include persons who issued the original detention order. The review panel lacks the requirements of independence and impartiality and in reality provides no meaningful relief to those who have been illegally detained. Moreover, the recommendations are not binding on the Government.

39. According to evidence received by the Special Rapporteur, detention orders are often extended beyond the period of three months. In several cases, persons have been detained for periods up to four years, often incommunicado. In an interview, the Chairman of the National Human Rights Commission (NHRC), Justice P.K. Nwokedi, stated "when we went to Kano, we found out that there are so many people who have been in prison for the past five years without being to court. Some have not even been charged to court." 8/ Dr. Auwald Hamisu Yadudu, Special Adviser (Legal Matters) to the head of State, has also made reference to committees established by the NHRC to look into the issue of "many detainees awaiting trial languishing in jail for years.". 9/ The following cases of persons who are reportedly undergoing extensive periods of detention have been communicated by the Special Rapporteur to the Government: Olabiyi Durojaiye (since 3 December 1996), Policarp Nwite (since 6 August 1997), Gio Aadum (since 10 October 1996), Baridi Kpalap (detained 14 October 1996), Frank Ovie Kokori (since August 1994), Milton Dabibi (since 25 January 1996), Kabir Ahmed (since March 1995).

40. It is estimated that the number of persons allegedly detained without trial is in the thousands. The Nigerian Government had refused to divulge the number of persons detained in Nigeria to the Commonwealth Ministerial Action Group of the Commonwealth Secretariat. 10/ According to recent figures by the NHRC, 60 per cent of those detained have not been tried. The Commission elaborates, "Some were thrown in there without the appropriate authorities knowing, and some would die there without the authorities knowing." 11/

41. Although the Nigerian Government has restored the writ of habeas corpus by Decree No. 18 of 1996, the Special Rapporteur considers that this measure loses significance in view of the fact that the Government often flouts with impunity court orders to produce detainees (see paragraph 26). The absence of requisite safeguards for preventing detention without trial and the absence of independent machinery for effective redress render the system arbitrary. The capricious application of Decree No. 2 of 1984 is described by the Chairman of

the NHRC thus: "in this country as soon as you make a report, they just go into the man's house and grab him, put him into the cell and lock him up." 12/ Extortion apparently motivates many arrests. 13/

42. The recommendation for the release of political detainees and all persons detained without trial such as trade union leaders, human rights activists, lawyers and journalists has been repeatedly made by the following bodies: the Secretary-General's fact-finding mission (A/50/960, annex I, para. 77), the Human Rights Committee (see CCPR/C/79/Add.65, para. 33), the Commonwealth Ministerial Action Group (in its report on the Harare Declaration) and, as noted above, the General Assembly and the Commission on Human Rights. The Nigerian Government, in its interim response of 21 May 1996 to the Secretary-General's fact-finding mission, stated that, "Very shortly [detainees] will be released based on an assessment of the individual merit of each case" (emphasis added) (A/50/960, annex II, para. 3). The subsequent letter of 16 October 1996 from the Government to the Officer-in-Charge of the United Nations Office of Legal Affairs, contained a list of 23 detainees who had been released, including three who were reportedly freed in pursuance of a court order. Considering the large number of detainees, this action is most disappointing, but it indicated a step in the right direction. In a statement on 17 November 1997, General Abacha announced an amnesty for prisoners and detainees who do not present a threat to national security. To date, none of these detainees have been released.

43. It has been brought to the attention of the Special Rapporteur that an increase in arrests and detentions has occurred in the past several months, particularly of journalists and activists. Batom Mitee, former prisoner of conscience whose August 1995 arrest was declared arbitrary by the Working Group on Arbitrary Detentions, was reportedly re-arrested on 3 January 1998 along with some 20 members of the Ogoni community in Bori, Rivers state. Chima Ubani, former prisoner of conscience and Secretary-General of the Democratic Alternative (who was released pursuant to the above-mentioned government communication of 16 October 1996 to the United Nations, following a long-standing detention declared arbitrary by the Working Group (see E/CN.4/1997/4, Decision No. 2/1996)), was allegedly re-arrested on 14 January 1998 during a press conference held by the Democratic Alternative in Lagos and is being held at an unknown location.

44. In connection with an alleged coup plot uncovered on 21 December 1997, the Government transmitted in note verbale 01/98 of 9 January 1998 the names of 11 persons arrested for "coup plotting", including the country's second-highest-ranking military officer, Chief of General Staff Lieutenant-General Oladipo Diya, 10 other officers and 1 civilian. The Government stated that the suspects would be tried in accordance with the Treason and Other Offences (Special Military Tribunal) Decree of 1986, and that a special investigation panel, headed by a senior military officer, had been constituted to ascertain the circumstances of the attempted coup. To date, the Government has not released details of the alleged coup plot.

45. Former head of State Olusegun Obasanjo and more than 30 others are serving life sentences for their alleged roles in a purported March 1995 coup plot after trial by military tribunals and by a process which fell short of

international standards for a fair trial. On 23 May 1996 the Working Group on Arbitrary Detention adopted Decision No. 6/1996 declaring the detention of these persons to be arbitrary (see E/CN.4/4/Add.1).

46. A disturbing trend which has been brought to the attention of the Special Rapporteur and reported by the Commonwealth Ministerial Action Group (CMAG), 14/ is the practice of detention of family members and other relatives of Nigerians living in exile or "underground". Judge Nwokedi of the NHRC has described the practice as follows: "a suspect's wife or child or his mother or father is arrested and detained in order to compel the alleged suspect to report himself to the police ... ." 15/ On 7 March 1997, Ladi Olorunyomi was allegedly detained for 46 days at the Directorate of Military Intelligence (DMI) and re-arrested during the night of 3 November 1997 for questioning on the whereabouts of her husband, an exiled journalist. Folake Folasade Iluyomade and Sabina Solayide Iluyomade, the daughter and wife respectively of exiled National Democratic Coalition (NADECO) member Lt. Col. Raphael Iluyomade, were allegedly detained from February to June 1997. Arit Igiebor, wife of the editor-in-chief of Tell magazine, Nosa Igiebor, was also reportedly detained briefly in September 1997 as a "proxy" for her husband.

3. Right to a fair trial

47. Article 14 of the ICCPR and article 7 of the African Charter, which guarantee the right to a fair trial, are violated by special tribunals established under decree to bypass the court system. The most notorious of these tribunals are established under the Civil Disturbances (Special Tribunal) Decree No. 2 of 1987, as was the tribunal which tried Ken Saro-Wiwa and the eight other Ogonis executed on 10 November 1995, and whose defects were recorded in the report of the Secretary-General's fact-finding mission (A/50/960, annex I, paras. 40-55). That the tribunal is not impartial and lacks the requirement of independence has been affirmed by two judgements of the African Commission, namely Constitutional Rights Project v. Nigeria (in respect of Wahab Akamu, G. Adeaga & others) and Constitutional Rights Project (in respect of Zamani Lekwot) v. Nigeria. 16/

48. The Secretary-General's fact-finding mission recommended that the Government of Nigeria repeal the Civil Disturbances (Special Tribunal) Decree so that offences of this type are tried by the ordinary criminal courts. In the alternative, the mission recommended (A/50/960, annex I, para. 77) that the following amendments be effected to the said Act:

(a) Section 2 (2b) of the Act providing for appointment of the serving member of the armed forces as a member of the special tribunal should be deleted;

(b) A specific provision should be incorporated to the effect that the members of the special tribunal shall be appointed on the recommendation of the Chief Justice of the Supreme Court of Nigeria;

(c) Section 7 of the Act should be amended to provide for confirmation of the orders of conviction and sentence by the Nigerian Court of Appeal in place of confirmation by the Provisional Ruling Council;

(d) Section 8 of the Act which excludes the jurisdiction of the courts of law to review the decision of the special tribunal should be deleted;

(e) A specific provision should be made to provide for an appeal against the decision of the special tribunal to the Supreme Court of Nigeria.

49. The Government of Nigeria amended the Act (a) to exclude members of the armed forces from serving on the tribunal and (b) to subject its verdicts and sentences to judicial review at appellate level before confirmation by the confirming authority. However, the changes regarding the composition of the tribunal do not fully meet the requirements of the recommendations because the question of confirmation of the sentence ultimately rests with the military. Consequently, the basic infirmity of the trial of Ken Saro-Wiwa due to the absence of due process and the lack of impartiality remains. The Human Rights Committee recommended in 1996 that "urgent steps should be taken to ensure that persons facing trials are afforded all guarantees of a fair trial, as explicitly provided for in article 14 (1), (2) and (3) of the Covenant, and to have their conviction and sentence reviewed by a higher tribunal, in accordance with article 14 (5) of the Covenant" (CCPR/C/79/Add.65, para. 31).

50. The right to a fair trial is also violated by the denial of legal assistance to the accused. It has come to the attention of the Special Rapporteur that the accused are not permitted lawyers of their own choice, not allowed sufficient time to prepare for their defence, and are subjected to punishment before the time for appeal has expired.

51. A speedy trial is implicit in the concept of a fair trial. According to various information received, individuals may await trial for long periods of time. Often this is due to the fact that they are charged before a tribunal which has no jurisdiction and are thus subsequently brought before another court which is supposed to have jurisdiction. For example, 19 Ogoni activists were first brought before a magistrate's court on 19 May 1995 for holding charge. On 17 July 1996, they were reportedly brought before two separate magistrate's courts. The magistrate's courts had lacked jurisdiction since the Rivers State High Court is reported to have jurisdiction in these cases.

52. The Government often challenges in appeal court orders granting bail and obtains a stay of these orders. Consequently, individuals may languish in prison. One example is that of Chief Moshood K.O. Abiola, who was granted bail by the High Court, a decision which the Government appealed. The Court of Appeal granted a stay of the order granting bail. Chief Abiola's appeal to the Supreme Court cannot be heard because certain vacancies, which must be filled in order for the Supreme Court to hear the appeal, are still outstanding.

53. Gbenga Adbusuyi is one of a group of prisoners, including leading pro-democracy activists, who allegedly remains in detention after being charged with treason in March 1997. Their trial before the ordinary courts has repeatedly been postponed.

54. Failure to make requisite changes in the law also pre-empts speedy trial. For example, the fact that changes in the composition of the tribunal under the Civil Disturbances (Special Tribunal Act) Decree No. 2 of 1987 have not

been carried out is given as a reason for not proceeding with the trial of the persons charged under that Act, notably Ogonis. Therefore, in many cases, delays may be caused by the inaction and incompetence of the authorities in question.

55. Many persons overstay the maximum period of sentence which may be imposed upon them following conviction. According to Mr. Michael Ejiofor Eneh, in the Public Affairs Department of NHRC, "some (detainees) have overstayed the maximum period allowed by law for people who have committed such offences but their cases have not even been tried". 17/

4. Freedom of movement

56. Freedom of movement, enshrined in article 12 of the ICCPR and article 12 of the African Charter, includes the right to leave and return to one's country. The right to travel abroad cannot be effectively exercised in the present context. However, several cases have come to the attention of the Special Rapporteur where passports have been seized or impounded without giving a reason and without the sanction of law. The passports of the following individuals have been seized for various periods of time: Abraham Adesanya, former senator and Acting President of the National Democratic Coalition (prior to his scheduled attendance at the Commonwealth Ministerial Action Group hearings on Nigeria in July 1997); Eke Ubiji, Executive Secretary of Amnesty International; David Omozuafoh, an Amnesty International staff member (subsequent to his return from an Amnesty International meeting); George Onah and Godwin Agbroko (following their release from prison); and Joseph Otteh and Ayo Obe of the Civil Liberty Organization (to prevent them from attending the meetings of the Human Rights Committee). Regarding the two latter individuals, the Committee noted that no explanation was provided by the Nigerian Government about these allegations (see CCPR/C/79/Add.65, para. 24). The passport of Festus Okoye, a human rights lawyer, was allegedly seized by members of the State Security Service (SSS) on 24 September 1996 at Murtala Mouhammed Airport, and has not been returned despite an order of the Federal High Court in Kaduna. The seizure of passports with a view to preventing the individual from attending an international conference or seminar and express his or her views at such an occasion constitutes a clear breach of article 12 of the ICCPR and also of the freedom of expression.

57. Detentions of persons upon their return from travel abroad also constitute a restriction on the freedom of movement. Ogaga Ifowodo, a member of the Civil Liberties Organization, was allegedly arrested and has been held incommunicado since his return to Nigeria from the United Kingdom on around 6 November 1997. It has been alleged that his detention may be a consequence of his visit to the United Kingdom at the time of the Commonwealth Heads of Government Meeting from 24 to 27 October 1997. Akinwumi Adesokan, a literary correspondent for the Post Express newspaper and an Association of Nigerian Authors award-winner, was reportedly arrested at the Nigerian-Benin border on 12 November 1997 upon his return from a year of fellowships in the United States of America and Australia. Babafemi Ojudu, managing editor of The News, was allegedly arrested on 17 November 1997 upon his return from a seminar in Kenya and is being detained at an SSS detention camp in Abuja.

5. Right to dignity and humane treatment while in detention

58. Article 10 of the ICCPR provides for the inherent dignity and humane treatment of all persons deprived of their liberty. The violation of this right takes place on a significant scale in Nigeria due to extremely harsh prison conditions which are reportedly life-threatening. With an overall prison capacity of 33,345, it was reported in 1996 that approximately 55,000 prisoners inhabited the nation's 43 prisons, a figure which has been contested by local human rights groups as conservative. The Chairman of the NHRC, Justice Nwokedi, characterized prison conditions as "disgusting". 18/ Reportedly 4,000 prisoners die in custody every year, 7 per cent of the prison population. Deaths in custody (see paragraph 36) can be attributed to severe overcrowding and a serious lack of basic sanitation, adequate food, clean water, ventilation and health care. Chronic and debilitating diseases including tuberculosis and intestinal problems, as well as skin infections, are very common. Allegations were received by the Special Rapporteur about torture and ill-treatment of detainees and prisoners, concerns which have also figured in the Human Rights Committee's concluding observations (CCPR/C/79/Add.65, para. 24). Cases of persons reportedly detained in solitary confinement have also come to the attention of the Special Rapporteur.

59. While the Government has acknowledged the problem of overcrowding, no substantive improvements have been apparent. The plea of lack of economic resources can at best constitute a temporary extenuating circumstance but not a permanent excuse. Moreover, authorities have repeatedly refused to allow detainees to avail themselves of their own medical services, even despite court orders. Mr. Nosa Igiebor, who was arrested on 23 December 1995 and held incommunicado at the Lagos State Headquarters of the SSS in Shangisha, was denied visits by his wife to provide him with needed medication despite a Federal High Court order to allow her visit. Additionally, a 5 February 1996 order granted by Justice M.B. Belgore in the case of Chief Fawehinmi v. Gen. Sani Abacha, requiring the respondents to allow family and doctors to deliver drugs and a special diet necessitated by a serious health condition, was disobeyed. Furthermore, political detainees are often reportedly held in remote locations, greatly complicating detainees' access to visits by family members or medical personnel. Such conditions of detention also violate provisions contained in the United Nations Standard Minimum Rules for the Treatment of Prisoners, the Basic Principles for the Treatment of Prisoners and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

60. Given these problems and the lack of improvement, it is unfortunate that the Government has been reluctant to permit neutral observers and special rapporteurs to visit prisons to objectively ascertain the conditions.

6. Freedom of expression and freedom of the press

61. Enshrined in article 19 of the ICCPR and article 9 of the African Charter, the right to freedom of expression is violated by several decrees which suppress press freedom. For example, the Offensive Publications (Proscription) Decree No. 35 of 1993 provides for the proscription and confiscation of any publication likely to "disrupt the process of democracy

and peaceful transition to civil rule, having regard to its contents (...) or disturb the peace and public order of Nigeria". The decree equally ousts the jurisdiction of the courts. The Transition to Civil Rule (Political Programme) Decree No. 1 of 1996 criminalizes peaceful criticism of, or activities against the transition to civilian rule. 19/ The Newspapers Decree No. 43 of 1993 and the Nigerian Press Council Decree No. 85 of 1992 impose significant registration requirements on newspaper and broadcasting enterprises. The Minister of Information, Walter Ofonogoro, announced in January 1997 that the Government intended to establish a "press court" in order to enforce Decree No. 43 and to charge journalists who "report untruths". Under Decree No. 38 of 1992, the Government established and appointed a National Broadcasting Commission with the power to revoke radio and television licences in instances in which it esteems the applicant does not "promote national interest, unity and cohesion".

62. As mentioned above, a wave of arrests in recent months, particularly of journalists and human rights activists, has been brought to the attention of the Special Rapporteur. Many journalists have been detained without trial, incommunicado, and for lengthy periods of time. Furthermore, a specific recommendation of the Secretary-General's mission to remove all restrictions on freedom of expression (see A/50/960, annex I, para. 77) has been ignored. Similar recommendations made by the Human Rights Committee and special rapporteurs have also been disregarded.

63. The following cases were brought to the attention of the Special Rapporteur. Some of them were the subject of joint urgent appeals to the Nigerian Government by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on torture. Adetokunbo Fakeye of PM News newspapers was allegedly arrested and detained at Defence Headquarters in Lagos on 4 November 1997; Jenkins Alumona, editor of The News magazine, was allegedly arrested on 8 November 1997 at the Lagos studios of the State-owned television; Onome Osifo-Whiskey, managing editor of Tell magazine, was reportedly arrested by armed security officers in Lagos on 9 November 1997; Mouhammed Adamu and Tenkum Kokoh of The Democrat and Folu Oyewusi of the Daily Sketh were allegedly detained on 1 October for holding a seminar on the proposed return to civilian rule; Henry Ugbolue was reportedly arrested, assaulted and released on 10 October 1997 for having written a report on the dismissal of over 20,000 government employees; Niran Malaolu, editor-in-chief of The Diet newspapers, was allegedly arrested in December 1997; Nduka Ogbeigbena, publisher of This Day, was reportedly arrested in Abuja on 14 November 1997; Ben Adaji, a correspondent of The News magazine, was reportedly arrested on 17 November 1997 following the publication of a report about intercommunal killings subsequent to intervention by military authorities in local government disputes; Rafiu Salau, manager of The News group, was reportedly arrested on 18 November 1997; Soji Omotunde, editor of African Concord magazine, was allegedly arrested on 25 October 1997 in Abuja; Mohammed Adamu, Bureau Chief of the African Concord, was reportedly arrested on 27 July 1997; Anyakwee Nsirimovu, Executive Director of the Institute for Human Rights and Humanitarian Law, and journalist Tokunbo Awoshakin of This Day were allegedly arrested and released after several days.

7. Freedom of assembly and association

64. The right to freedom of assembly and association as enshrined in articles 21 and 22 of the ICCPR and articles 10 and 11 of the African Charter have routinely been violated by the promulgation of various decrees which infringe upon the rights of professional bodies and trade unionists. For example, a decree passed by the Government intended to erode the independence and autonomy of the Nigerian Bar Association was held by the African Commission to violate, inter alia, article 10 of the African Charter. 20/ Decree No. 26 of 1996 grants the Labour Minister broad administrative authority to dissolve unions, and Decree No. 29 of 1996 criminalizes the association of a trade union with any other international association without government approval. In contravention of ILO Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize, the Government promulgated the Nigeria Labour Congress (Dissolution of National Executive Council) Decree No. 9 of 1994 dissolving the elected national executive council of the Nigeria Labour Congress (NLC). In response to nationwide oil workers' strikes in 1994, the Government promulgated Decree Nos. 9 and 10 of 1994 dissolving the elected national executive councils of the two key unions, the National Union of Petroleum and Natural Gas Workers (NUPENG) and the Petroleum and Natural Gas Senior Staff Associations (PENGASSEN), and replacing them with single administrators. The Trade Unions (amendment) Decree No. 4 of 1996 ordered the merging of a number of unions, thereby decreasing the number of unions affiliated to the NLC from 41 to 29. It also barred full-time union managers and organizers from seeking elective positions in the NLC or the unions that employ them, and included a clause precluding judicial challenge to the decree.

65. The failure of the Government of Nigeria to comply with and implement its obligations under the ILO Freedom of Association and Protection of the Right to Organize Convention 21/ was once again noted by the International Labour Conference Committee of Experts on the Application of Conventions and Recommendations. The International Labour Conference, at its eighty-fifth session, expressed deep concern that no concrete progress had been made to date in relation to the very grave trade union situation in the country - this despite the fact that Nigeria already figured in two previous special paragraphs, in 1995 and 1996, in the report of the Conference. Furthermore, despite repeated calls for the Government to accept an in situ mission to examine allegations of violations of workers' rights, the ILO's Committee on Freedom of Association stated in its November 1997 report that it "cannot but deeply deplore the fact that, for nearly three years, the Government has consistently evaded responding to the urgent calls for a mission and, when finally agreeing to a month when such a mission could be carried out, the Government waited until the eve of the mission to indicate that the period was not suitable." 22/ The Committee has made calls to the Government of Nigeria regarding the adoption of anti-union decrees and the detention of unionists (case Nos. 1793 and 1935). Yet despite numerous pleas for their release, from the ILO as well as from international and national organizations, two prominent union leaders remain detained without charge: Frank Kokori, the General Secretary of NUPENG, has reportedly been held since August 1994 in Borno state, near the Chadian border, and Milton Dabibi, former

Secretary-General of PENGASSAN and Secretary-General of the Senior Staff Consultative Association of Nigeria (SESCAN), has reportedly been detained since January 1996 in the far south-east of the country.

66. The Special Rapporteur has been informed that during peaceful protests commemorating Ogoni National Day on 3 and 4 January 1998, the Rivers State Internal Security Task Force raided a number of villages and arrested and detained over 30 Ogonis. In 1996 and 1997 the Internal Security Task Force reportedly broke up similar celebrations and arrested many of the participants. The June 1997 rallies to mark the anniversary of the 12 June 1993 elections were banned and disrupted. In August 1997 an award ceremony to honour an eminent jurist from Benin, Mrs. Elizabeth Poignon, was reportedly cancelled by armed police and its organizer, the Chairman of Human Rights Africa, Dr. Tunju Abayomi, detained. A press conference scheduled for Moshood Abiola's birthday on 24 August 1997 was reportedly prevented, as was the launch of a book six days later entitled, Abiola, Democracy and the Rule of Law, by journalist Richard Akinola. The farewell party organized by the human rights community for the outgoing United States Ambassador Walter Carrington was broken up by security officers in September 1997.

67. Regarding the political process, it has come to the attention of the Special Rapporteur that a reconstituted National Electoral Commission (NECON) in September 1996 oversaw a problematic six-week registration process during which parties had to register 40,000 members in each of the 30 states and 15,000 in the capital territory, issue photo identity cards, provide detailed and extensive information, and demonstrate that they were organized in at least two thirds of the local governments in each state. Despite the cumbersome requirements and excessive cost of $6,000, 18 parties were able to register. However, NECON accepted the registration of only 5 of the 18 parties, thus denying many key actors access to the political process. Chief Abiola's party was not registered, along with other parties which included known opponents of the Government.

8. Women's rights

68. Nigeria ratified the Convention for the Elimination of All Forms of Discrimination against Women on 13 June 1985 without reservations. The Nigerian Constitution of 1979 in its section 39 recognizes the equality of men and women and prohibits discrimination on the ground of sex. Unlike other rights provisions, this provision has not been subject to military government decrees. However, the Special Rapporteur has learned that women's right to equality has not been enforced due to discriminatory administrative policies, the practices of authorities, and cultural beliefs and attitudes which are given the force of law through customary law systems.

69. The dual system of law in Nigeria empowers the courts to administer rules of customary law provided they are not repugnant to natural justice, equity and good conscience. Customary and Shariah (Islamic) courts established in all states of the Federation administer and enforce customary laws, some of which uphold the unequal treatment of women. Reportedly amongst the Igbo people, a woman has no right to own land, despite the fact that many women are farmers. Women may therefore lose land in a divorce after having spent years farming it, and are unable to use land as credit collateral. Furthermore,

some customary practices regard a woman as part of her husband's property, which may then be "inherited" by the husband's eldest male relative.

70. Customary law is particularly influential in the private sphere, regulating issues such as marriageable age, consent to marriage, property rights, custody of children upon divorce, etc. Three types of marriage exist in Nigeria: statutory, customary and Islamic. Customary law places no restrictions on marriageable age. The Special Rapporteur has been informed of the practice, particularly in northern Nigeria, of giving away female children in marriage, in contravention of article 16 (1) (b) and 16 (2) of the Convention. According to the Government, customary law marriages are also often polygamous, and under the Islamic faith, every Muslim has the right to marry up to four wives provided the man can "take care of the wives equally (CCPR/C/92/Add.1, para. 168)". Such practices, which violate article 26 of the ICCPR and article 16 of the Convention, figured among the concerns of the Human Rights Committee at its fifty-seventh session when it examined the initial report of Nigeria (CCPR/C/92/Add.1). The Special Rapporteur notes that while the implementation of international norms in particular cultural or religious contexts may entail their adaptation, freedom of religion may not be invoked to shield from scrutiny any law which infringes upon women's rights.

71. Domestic violence remains a problem in Nigeria, especially the practice of wife-beating. Section 55 (1) of the Penal Code Law No. 18 of 1959 (Cap 89, 1963 Laws of Northern Nigeria), states:

> "Nothing is an offence which does not amount to infliction of grievous hurt upon any person and which is done: by a husband for the purpose of correcting his wife, such husband and wife being subject to any native law or custom in which such correction is recognized as lawful."

72. Section 24 of the Penal Code describes grievous hurt as "... permanent loss of sight, ability to hear or speak, facial disfigurement, deprivation of any member or joint, bone fracture or tooth dislocation, other endangering harm". Consequently, it is extremely difficult for a woman to file a criminal complaint against her husband for spousal abuse. Furthermore, law enforcement agents practice a policy of non-interference in "domestic" matters, and reportedly regard a certain amount of physical battery as culturally acceptable. In customary practices, seeking redress may actually attract more punishment for the woman due to it being construed as an act of insubordination and disobedience to the traditional norms. Women therefore tend to adopt a "culture of silence".

73. It has also been brought to the attention of the Special Rapporteur that similar offences attract different penalties depending on gender. Section 353 of the Criminal Code (Laws of the Federation of Nigeria 1990) considers the offence of indecent assault on males as a felony punishable by three years' imprisonment while section 360 treats a similar offence of indecent assault on females merely as a misdemeanour punishable by a maximum of two years' imprisonment.

74. Marital rape is unrecognized by law in Nigeria, the most fundamental reason being that consent to marriage is tantamount to the foreclosure of

consent to each particular sexual intercourse. Nor does the law in Nigeria punish a man who inflicts extensive bodily harm on his wife while forcibly having sex with her for a sexual offence, but rather for an ordinary assault. Cultural inhibitions and taboos about sexual activities restrain most victims from acknowledging and reporting incidents even informally, and victims trapped in situations of sexual harassment and assault often remain exploited due to their inability to leave due to threats of physical harm, withdrawal of financial support, or ostracism from the community.

75. According to Nigerian law, rape is punishable maximally by life imprisonment. However, victims are not granted anonymity during prosecutions, and media attention and social stigma dissuade most victims from reporting. The Special Rapporteur has received allegations of rape taking place at police roadblocks as well as in prisons. When rape has been perpetrated during armed robbery attacks in urban areas of Nigeria, the perpetrators are often charged solely for the property offence of armed robbery.

76. According to reports received, female genital mutilation is still practised extensively in many parts of Nigeria. Female genital mutilation is recognized as a form of violence against women by the Declaration on the Elimination of Violence against Women (article 2 (a)), adopted without a vote by the General Assembly in 1993, and by the Beijing Platform for Action (paragraph 113 (a)), adopted by the Fourth World Conference on Women in 1995. The Sub-Commission on the Prevention of Discrimination and Protection of Minorities adopted a resolution 1997/8, also without a vote, in which it appealed to all States "to achieve the total elimination of female genital mutilation". A 1997 World Health Organization study reported that an estimated 30.6 million women and girls, or about 60 per cent of the total population of Nigeria, have undergone genital mutilation. A 1996 United Nations Development Programme study put the figure at 32.7 million. At its thirteenth session in 1996, the Committee on the Rights of the Child expressed its concern at the continuation of the practice of female genital mutilation, and the insufficient measures being taken by the Government to address the practice (see CRC/C/15/Add.61, para. 15). Government officials have supported a campaign against the practice, and in February 1997 the Minister of Health announced the establishment of a 25-person committee to study the issue. The Ministry also sponsors public awareness projects to educate the public about the health hazards of female genital mutilation.

77. In some parts of the country, married women must obtain the consent of their husbands before they can be medically treated. Women's health is generally not given attention unless they become mothers. Even then, many women have been denied proper reproductive health care, thus contributing to a high rate of maternal mortality.

78. Article 7 of the Convention obliges Governments to take all appropriate measures to eliminate discrimination against women in the political life of the country. Despite the lack of legislative barriers to women's participation in politics and the judicial system in Nigeria and the fact that women have had the same voting rights as men for years, women continue to be marginal actors in the public sphere. The Special Rapporteur was informed that there has been an insignificant participation of women in politics since independence, and that women comprise a small minority on the benches of

customary courts. One of the reasons for this is linked to the fact that few women serve in the top hierarchy of the military, which is itself due to the exclusion of women from combat duties which precludes attainment of seniority. To date, no female has served as a member of the highest (federal) legislative and executive council in any of the military regimes which have held power in Nigeria. Women's participation in politics has been complicated by the role of money in the determination of political participation and outcomes, as well as their lack of access to adequate education and information. However, it must be noted that some small improvements have been made in women's participation in the political process at the state level, and the past years have seen an increase in the number of female lawyers. Three women are included in the Cabinet as announced on 15 December 1997.

79. While no law expressly states that a woman must acquire the consent of her husband in writing to obtain bank loans and overdrafts, depending on the bank and particular person, a woman is often asked for her husband's written permission as additional collateral. This practice also applies to cases of goods on hire purchase and in obtaining passports, especially if the names of the children are to be included in the passport.

80. The Nigerian Government has taken certain measures to protect the rights of women including the establishment of a Ministry for Women's Affairs, which is also represented at the state level. In conjunction with the Family Support Programme, this ministry is involved in development issues affecting rural women through assistance in farming, handicrafts and textile-making. However, many women in the urban areas have yet to see concrete results from these programmes. The Government has also recognized the importance of promoting education as a tool to improve the situation of girl children, however, the effectiveness of the measures taken has yet to be seen. Furthermore, despite requests, no information has been made available by the Government regarding the effectiveness of the Ministry in combating the practices of forced marriage, female genital mutilation, and other discriminatory practices against women arising out of customary laws.

9. Children's rights

81. Nigeria ratified the Convention on the Rights of the Child in 1991. The Special Rapporteur takes note of the establishment of a National Child Rights Implementation Committee in 1994, inter alia to ensure the popularization of the Convention on the Rights of the Child and the Charter on the Rights and Welfare of Children of the Organization of African Unity (OAU); to review the state of implementation of the Convention; to develop specific programmes to enhance the status of the Nigerian child; and to collect and collate data on the implementation of the rights of the child. The Special Rapporteur also takes note of the Government of Nigeria's elaboration of a National Plan of Action following the commitments made in connection with the World Summit for Children. However, the Special Rapporteur has received reports that many provisions of the Convention on the Rights of the Child are violated, especially regarding the administration of juvenile justice and the institutionalization of children. The Committee on the Rights of the Child, in considering Nigeria's initial State party report (CRC/C/8/Add.26) expressed concern that the provision of national legislation by which a child may be detained in Nigeria may permit the indiscriminate sentencing of children for

indeterminate periods in violation of article 37 (b) of the Convention, which establishes that the arrest, detention or imprisonment of a child shall only be used as a measure of last resort and for the shortest appropriate period of time (see CRC/C/15/Add.61, para. 21). The Committee also expressed concern at the inadequacy of safeguards for all children who are detained by legal authorities, the conditions of places of detention for children including the lack of medical services, and the lack of services for the recovery and rehabilitation of children who come into conflict with the law. The imposition of the death penalty on persons under 18 years of age constitutes a clear violation of article 6 (5) of the ICCPR and article 37 (a) of the Convention on the Rights of the Child (see paragraph 32 above).

10. Right to development and to a satisfactory environment

82. Articles 21, 22 and 24 of the African Charter set out the right of all people to a generally satisfactory environment favourable to their development, the right to economic, social and cultural development, and the right to benefit from the advantages derived from natural resources. Deep concerns have been expressed to the Special Rapporteur about reported widespread and severe environmental damage in the River Delta region on account of oil exploration and other operations of the Shell Petroleum Development Company of Nigeria (SPDC) which have resulted in impairment of the health of the people living in the region. These allegations are emphatically denied by SPDC. In these circumstances, and in view of the technical and scientific issues involved, the appropriate course would be for the Government to appoint an independent agency after consultation with MOSOP and SPDC which would determine all aspects of environmental damage due to oil and other operations. The findings and conclusions of such a study should be made public.

83. The Special Rapporteur has also received reports that SPDC has its own well-armed security force which is intermittently employed against persons protesting and demonstrating against SPDC's activities. It is alleged that such action has resulted in serious injuries. It has also been reported that the Nigerian authorities have put at SPDC's disposal a mobile police force to suppress protests and demonstrations. These allegations raise serious concerns about the Nigerian Government's willingness and ability to protect the rights of the people of the region.

84. The Secretary-General's fact-finding mission had recommended that a committee be established comprised of representatives of the Ogoni community and other minority groups in the region, to be chaired by a retired judge of the High Court, for the purpose of introducing improvements in the socio-economic conditions of these communities, enhancing employment opportunities and health, education and welfare services, and to act as ombudsman in any allegations of harassment at the hands of the authorities. This recommendation has not been implemented.

C. Measures taken by the Nigerian Government

85. The following measures taken by the Nigerian Government for protection and promotion of human rights should be noted. A National Human Rights Commission was inaugurated on 17 June 1996 with the stated objective of

dealing with all matters relating to the protection of human rights. The Chair of the Commission is Justice P.K. Nwokedi, a retired Supreme Court Justice. While the Commission's recommendations are not binding on the Government, 23/ it appears from its first newsletter, published in December 1997, that it has already taken some action and its intervention has resulted in the release of some prisoners. 24/ The Chairman of the Commission has apparently also been able to initiate a constructive dialogue on human rights issues facing Nigeria. He has already made the recommendation to establish committees to study prison conditions and to introduce human rights education courses in schools and police and law enforcement agencies. The Commission has also undertaken several human rights promotional activities in conjunction with NGOs. While it is too early to assess the effectiveness of the commission, with the passage of time, if it discharges its functions in an independent manner, the Commission may gain credibility with the people of Nigeria as a significant mechanism for the protection of their human rights.

V. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

86. Upon a careful analysis and evaluation of the sources of information and materials consulted and in the absence of any response from the Nigerian Government in respect of the information and clarifications sought, the inescapable conclusion which emerges is that widespread violation of basic human rights occurs in Nigeria.

87. The Nigerian legal system currently does not provide effective protection of human rights. Several provisions of the 1979 Constitution of the Federal Republic of Nigeria which guarantee basic human rights have been suspended. The incorporation of the African Charter on Human and Peoples' Rights into the domestic laws of Nigeria has been revoked.

88. Rule of law does not prevail in Nigeria. Nigeria's main decision-making organ is the Provisional Ruling Council (PRC) which rules by executive decrees which are clearly incompatible with the rule of law. Several of these decrees oust the jurisdiction of the courts to grant relief in respect of violation of human rights.

89. The decisions of the African Commission on Human and Peoples' Rights are not respected. The independence and authority of the judiciary are undermined by ouster clauses in the decrees and the practice of disobedience of court orders.

90. The right to life is insufficiently protected. Deaths occur in custody under unexplained circumstances and on account of indiscriminate and excessive use of force.

91. Imposition of the death penalty in Nigeria occurs in contravention of article 6 (2) of the ICCPR. Death sentences have been imposed on persons below 18 years in violation of article 6 (5) of the ICCPR and article 37 (a) of the Convention on the Rights of the Child.

92. The right to liberty and security of persons is violated on a massive scale. Numerous individuals are detained arbitrarily and held incommunicado for long periods of time. No safeguards are provided against the abuse of power of detention, nor is there an effective or efficacious remedy in respect of arbitrary detentions. The review panel is an ad hoc body, whose members are appointed by the executive and whose recommendations are not binding on the Government. It lacks the requirements of independence and impartiality and provides no meaningful relief to those who have been illegally detained. Restoration of habeas corpus is of little benefit to detainees because court orders for release of detainees are generally not implemented.

93. "Hostage-taking" is prevalent. This practice involves the detention of family members and other relatives of Nigerians living in exile and constitutes a patent human rights violation.

94. The Nigerian Government has persistently ignored the recommendations of numerous international bodies to release political prisoners, trade union leaders, human rights advocates and journalists. Such requests have been made by the United Nations General Assembly, the Commission on Human Rights, the Secretary-General's fact-finding mission, the Human Rights Committee and the Commonwealth Ministerial Action Group on the Harare Declaration.

95. Due process and fair trial are conspicuously absent in criminal trials. Tribunals before whom the accused are tried lack the requisite independence and impartiality. Despite the recommendations of the Secretary-General's fact-finding mission and the decisions of the African Commission, no qualitative changes have been made in order to conform to article 14 of the ICCPR and article 7 of the African Charter. Persons convicted by these tribunals under a flawed process are still being held in detention.

96. Long delays are inherent in the disposal of criminal cases. These occur because of the Government's deliberate inaction in the face of taking necessary steps such as filling judicial vacancies or amending the Civil Disturbances (Special Tribunal) Act of 18 March 1987 as per the recommendation of the Secretary-General's fact-finding mission.

97. Prison conditions are harsh and life-threatening. Medical relief is withheld from sick persons and detainees are denied access to doctors and their own medications, often in direct contravention of court orders. Such treatment of prisoners is in breach of the United Nations Standard Minimum Rules for the Treatment of Prisoners and the Basic Principles for the Treatment of Prisoners.

98. The Government suppresses freedom of expression and freedom of the press. The recommendations of the Secretary-General's fact-finding mission to remove restrictions on freedom of expression and freedom of the press have been ignored. Several repressive decrees still exist. Numerous journalists have been arrested, intimidated, harassed, arbitrarily detained and also subjected to inhumane treatment.

99. Freedom of assembly and association continue to be violated. The Government enacts repressive decrees and detains trade union leaders without charge despite calls from the Secretary-General's fact-finding mission, the

Human Rights Committee, the Commonwealth Ministerial Action Group, the General Assembly, the Commission on Human Rights and the International Labour Organization.

100. Freedom of movement is violated by seizure and impounding of passports for extraneous reasons. The Government discourages participation in international conferences by detaining persons to prevent their participation and arresting them upon return.

101. The Government has failed to address the plight of the Ogoni people and to protect their human rights. The recommendation of the Secretary-General's fact-finding mission concerning the appointment of a committee for introducing improvement in the socio-economic conditions of minority communities has been ignored.

102. The Nigerian Government is indifferent towards the right to development and to a satisfactory environment. Issues relating to environmental degradation in the River Delta region alleged to be caused by the operations of the Shell Petroleum Development Company have received insufficient attention.

103. The violation of women's rights continues both in law and in practice. Despite the establishment of a Ministry for Women's Affairs, discrimination is prevalent in the public and private spheres and the practice of female genital mutilation is still widespread. However, there seems to be some awareness about the importance of women's rights. Small improvements have been made in women's participation in the political process and three women have been included in the current Cabinet.

104. The establishment of the National Child Rights Implementation Committee and the preparation of a National Plan of Action following the commitments made in connection with the World Summit for Children are welcome steps. Nonetheless, provisions in the Convention on the Rights of the Child are not complied with, especially regarding the administration of juvenile justice. Indiscriminate arrest and detention of children for long periods and indiscriminate sentencing are in violation of article 37 (b) of the Convention.

105. Certain measures have been taken in the implementation of the transitional programme for return to civilian rule such as the establishment of the NECON and the NHRC. However, there have not only been delays in the timetable of the transitional programme, but the non-inclusive nature of the process resulting from the limited registration of political parties, the absence of dialogue with credible opposition and human rights groups, and the introduction of a decree enabling the head of State to remove duly elected local council representatives from their positions cause serious misgivings about its credibility and the genuineness of the Government's commitment to restore democracy.

106. A total lack of confidence exists between the opposition and the Government. The Government regularly suppresses, harasses and detains those who criticize its policies. Measures taken by the Government to facilitate

return to civilian rule are regarded at best with cynical scepticism. A transition process which does not include all elements of the Nigerian political spectrum cannot be credible.

107. The Nigerian Government has failed to cooperate with the Commission on Human Rights by preventing the Special Rapporteurs on extrajudicial, summary or arbitrary executions and on the independence of judges and lawyers, as well as the present Special Rapporteur, from visiting the country in discharge of their mandates. Such conduct implies disrespect bordering on defiance of the resolutions of the General Assembly and the Commission on Human Rights.

108. The National Human Rights Commission of Nigeria has given a good account of itself. It has made salutary suggestions about human rights education as well as the establishment of committees for inspection of prisons.

B. Recommendations

109. In light of the above, the Special Rapporteur draws the attention of the Commission on Human Rights to the following recommendations to the Government of Nigeria:

(a) All political prisoners, trade union leaders, human rights advocates and journalists currently being detained without charge or trial should immediately be released. This is an essential confidence-building measure, vital for the democratization process and for imparting credibility to the process of transition to civilian rule;

(b) All decrees which suspend the human rights provisions in the Constitution should be repealed;

(c) All decrees which oust the jurisdiction of courts in matters involving life and liberty of the people should be repealed;

(d) State Security (Detention of Persons) Decree No. 2 of 1984 should be immediately repealed. In the alternative, the Decree must be amended to incorporate provisions requiring the grounds for detention to be provided to detainees and for the right to appeal against detention to a board or a review panel composed of judicial officers. Recommendations of the review panel should be binding on the Government or, in the event that the Government takes a contrary view, reasons for not accepting the recommendations must be recorded in writing and publicized;

(e) Determination of the rights and obligations of persons and in particular the determination of any criminal charge against a person should be made by regular courts of law. In the alternative, the composition of all special tribunals should be independent and perceived to be so. Members of special tribunals should be appointed on the recommendations of the Chief Justice of the Supreme Court of Nigeria. All court and tribunal proceedings must be conducted in public;

(f) Confirmation or reversal of conviction and sentence should be entrusted to the Nigerian Court of Appeal instead of the President of the Provisional Ruling Council and an appeal to the Supreme Court of Nigeria should be provided;

(g) Nigeria should abolish the death penalty. In the alternative, imposition of the death penalty should occur only in strict compliance with article 6 of the ICCPR, and in no circumstances should death sentences be carried out on persons under the age of 18 years;

(h) General Obasanjo and others serving life sentences after trial by military tribunals and by processes which fell short of international guarantees for a fair trial should be released;

(i) Immediate steps should be initiated to remove the obstacles to speedy disposal of criminal trials such as filling of vacancies in court and carrying out amendments to the Civil Disturbances (Special Tribunal) Decree No. 2 of 1987. Chief M. K. O. Abiola should be promptly brought to trial or released;

(j) Prompt compensation should be paid to persons whose human rights have admittedly been violated;

(k) Prison conditions should be redressed as a matter of urgency. Immediate measures should be adopted to ensure that the conditions of detention fully comply with article 10 of ICCPR, the Standards Minimum Rules for the Treatment of Prisoners and other relevant international instruments. The practice of keeping persons in solitary confinement should be discontinued except in rare cases of security risk in which specific reasons for solitary confinement are recorded in writing. Provision should be made for frequent visits to prisons by a committee comprised of judicial officers, lawyers, doctors and representatives of NGOs;

(l) Detainees should be permitted periodic visits by members of their family and should have access to lawyers and doctors of their choice. Detainees should not be denied reading material and other basic amenities;

(m) Restrictions on the freedom of expression and freedom of the press should be removed by repealing the existing decrees or by amending the decrees so as to allow criticism and expression of dissent. Decree No. 1 of 1996 criminalizing criticism of the transition programme should immediately be repealed;

(n) The practice of impounding passports without notice and without grounds should immediately terminate. A statutory provision should exist which establishes the grounds on which passports can be impounded and also provide a right of appeal against the impoundment to a judicial body;

(o) All restrictions on trade unions and other professional associations which erode their autonomy and independent functioning must be removed;

(p) Steps should be taken to ensure full and equal enjoyment by women of the rights and freedoms guaranteed by the ICCPR and the Convention on the Elimination of All Forms of Discrimination against Women and their equal participation should be encouraged at all levels of political, social and economic life of the country. Laws contrary to the equal rights of women should be repealed. Urgent measures should be adopted to curtail the practices of female genital mutilation and forced marriage;

(q) Urgent steps should be taken to ensure compliance with the provisions of the Convention on the Rights of the Child. Immediate measures should be initiated to strengthen safeguards for children in detention in respect of their recovery and rehabilitation;

(r) Measures should promptly be initiated to alleviate the plight of the Ogoni people, including the implementation of the recommendation of the Secretary-General's fact-finding mission that a committee comprised of representatives of the Ogoni community and other minority groups in the region, to be chaired by a retired judge of the High Court, be appointed for the purpose of introducing improvements in the socio-economic conditions of these communities;

(s) An independent agency should be established in consultation with MOSOP and SPDC which would determine all aspects of environmental damage due to oil exploration and other operations. The findings and conclusions of such a study should be made public;

(t) The recommendations of the Secretary-General's fact-finding mission and of the Human Rights Committee as contained in its concluding observations should be promptly and fully implemented;

(u) The National Human Rights Commission should be strengthened by expansion of its powers and jurisdiction to cover all cases of violations of human rights, notwithstanding the ouster clauses in the several decrees. Security of tenure should be granted to the Chairman and members of the NHRC. Appointments of members should be made in consultation with the Chief Justice of the Supreme Court of Nigeria;

(v) The Government should ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(w) The Government should extend its cooperation to special rapporteurs of the Commission on Human Rights in the exercise of their mandates;

(x) An international observer team should be given observer status and permitted attendance at criminal trials for alleged crimes of treason and other crimes involving the death penalty or long-term imprisonment.

Notes

1/ See E/CN.4/1997/62/Add.1, sect. I.

2/ General Assembly resolutions 50/199, 51/109 and 52/144; Commission on Human Rights resolution 1996/79.

3/ The Federal Military Government (Supremacy and Enforcement of Powers) Decree No. 12 of 1994 declares in section 2 (b) that "(i) no civil proceedings shall lie or be instituted in any court for or on account of or in respect of any act, matter or thing done or purported to be done under or pursuant to any Decree or Edict and if such proceedings are instituted before, on or after the commencement of this Decree the proceedings shall abate, be discharged and made void; (ii) the question whether any provision of Chapter IV of the Constitution of the Federal Republic of Nigeria 1979 (bill of rights) has been, is being or would be contravened by anything done or purported to be done in pursuance of any Decree shall not be inquired into in any court of law and accordingly, no provision of the Constitution shall apply in respect of any such question".

4/ Clause 5 of the Constitution (Suspension and Modification) Decree No. 107 of 1993 reads: "No question as to the validity of this Decree or any other Decree made during the period 31 December 1983 to 26 August 1993 or made after the commencement of this Decree or of an Edict shall be entertained by any court of law in Nigeria."

5/ In Human Rights Law Journal, vol. 18, No. 1-4, 1997, p. 36.

6/ Attorney-General of the Federation v. Chief Adigun Ogunseitan and Others (Nigerian Bar Association), Suit No. LD/1799/92, 2 July 1992.

7/ See Human Rights Law Journal, op. cit., pp. 28, 30.

8/ National Human Rights Commission Newsletter, 1st Edition, December 1997, p. 13.

9/ Ibid, p. 2.

10/ Report of the Commonwealth Ministerial Action Group on the Harare Declaration to Commonwealth Heads of Government, Edinburgh, 1997, p. 21.

11/ National Human Rights Commission Newsletter, op. cit., p. 16.

12/ Ibid, p. 12.

13/ "As you all know, there are lots of arrests going on and many of them are motivated by greed for money. At times, the law enforcement agents will go and make arrest and when they are given some money, they release the victim." Ibid, p. 15.

14/ Report of the Commonwealth Ministerial Action Group on the Harare Declaration to Commonwealth Heads of Government, op. cit. p. 25.

15/ Nigerian Liberation, National Democratic Coalition of Nigeria (NADECO), vol. 2, Issue 1, January/February 1998, pp. 8-9.

16/ Human Rights Law Journal, op. cit., pp. 28, 30.

17/ National Human Rights Commission Newsletter, op. cit., p. 16.

18/ Ibid., p. 14.

19/ This decree makes punishable by five years' imprisonment any person who "organizes, plans, encourages, aids, cooperates or conspires with any other person to undermine, prevent or in any way do anything to forestall or prejudice the realization of the political programme,"; or if any person "does or attempts to do any act to counsel, persuade, encourage, organize, mobilize, pressurize or threaten another person to join with him or with any other person or persons to misrepresent, accuse or distort the details, implications or purports of any item of the political programme". Transition to Civil Rule (Political Programme) Decree No. 1 of 1996, section 6 (a) and (b).

20/ Human Rights Law Journal, op. cit., p. 31.

21/ ILO Convention No. 87 came into force on 4 July 1950. Article 3 of the Convention:

> "1. Workers' and employers' organizations shall have the right to draw up their constitutions and the rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programmes.
>
> "2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof."

Article 4 states: "Workers' and employers' organizations shall not be liable to be dissolved or suspended by administrative authority."

22/ 308th Report of the Committee on Freedom of Association, ILO Governing Body, two-hundred and seventieth session, Geneva, November 1997, pp. 13-14.

23/ Sections 2 (3) (b), and 4 (2) of Decree No. 22 of 1995 establishing the Commission stipulate that Commission members, who are appointed by the head of State, may be removed "if he is satisfied that it is not in the interest of the public that the member should remain in office".

24/ National Human Rights Commission Newsletter, op. cit.